

The Public Utility Commission of Texas (PUCT): Issues In Water

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TEXAS RURAL WATER ASSOCIATION'S FALL
MANAGEMENT CONFERENCE

WATER UTILITY REGULATION AT THE PUBLIC UTILITY COMMISSION
OF TEXAS

COMMISSIONER KENNETH W. ANDERSON, JR.
PUBLIC UTILITY COMMISSION OF TEXAS

NOVEMBER 2, 2016

Disclaimer

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- The views and opinions in this presentation are my own and do not represent the views of any other Commissioner or any of the staff of the PUCT.

Question And Answer Period At End

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- The final 20 – 30 minutes will be reserved for detailed questions.
- A member of TRWA will be recording all the questions.
 - The individual asking the question must identify themselves with contact information so that if I'm unable to answer the specific question, the staff at the PUCT will be able to respond.
 - A member of TRWA staff will act as a scribe and record the information and the question.
 - The answers will be published by TRWA to all members.

Transition from TCEQ to PUCT

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- PUC Sunset Bill in 2013 included transfer with significant changes to the regulatory process of water and sewer utility ratemaking.
- Moved original jurisdiction for investor owned utilities from TCEQ to PUCT.
- Moved appellate jurisdiction for water supply or sewer service corporations, municipalities and utility districts from TCEQ to PUCT.
- Moved original jurisdiction for granting, amending and revoking CCNs as well as Sale, Transfer, and Mergers from TCEQ to PUCT.
- September 1, 2013 – Water and Wastewater ratemaking began transition to PUCT.

Office of Public Utility Counsel (OPUC)

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- The new law also authorizes OPUC to represent residential and small commercial water utility consumers, as a class, in water proceedings.

PUCT Organization Chart

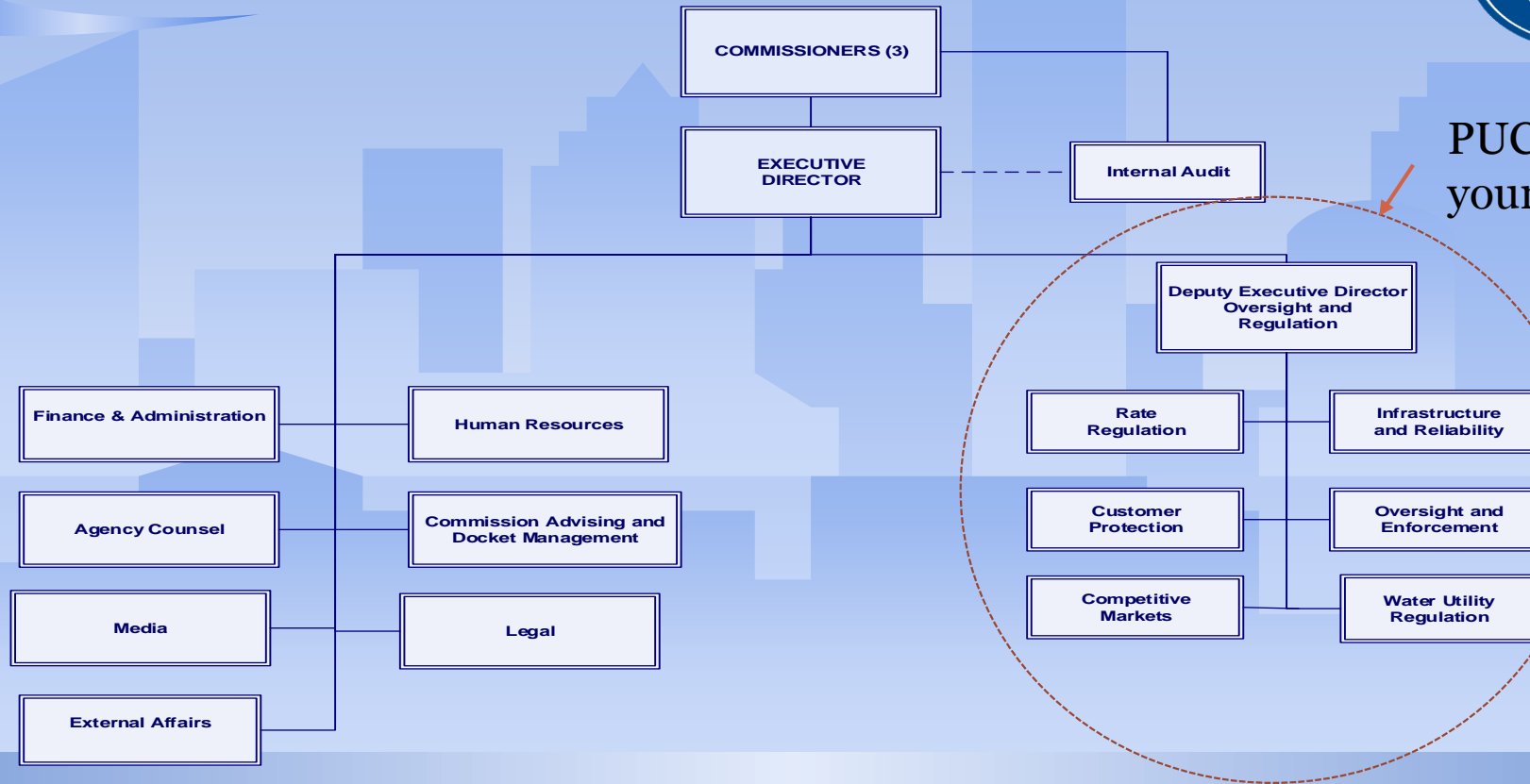
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PUBLIC UTILITY COMMISSION OF TEXAS
FUNCTIONAL ORGANIZATION CHART
Fiscal Year 2017

October 2016



PUCT Staff available for
your assistance.



Organizational Structure of PUCT

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- Three Commissioners who have ultimate authority over PUCT and who decide matters that come before the commission.
 - Rulemaking.
 - Contested rate cases.
 - Contested dispute cases.
 - CCN applications or modifications, including expedited release applications.
- *Ex Parte Restrictions:* The Commissioners are able to discuss matters with utilities and the public as long as the matter being discussed is not a contested case before the commission. (Ex parte rules apply to contested matters.)
- Commissioners are further restricted from discussing any matter amongst themselves unless at an open meeting before the public. This is because of the Texas Open Meeting law.
- Supported by three types of staff at the PUCT.
 - Commission Advising – legal staff of the Commissioners, not of the commission. Commission advising is only available to advise the commissioners on legal matters, they are not available to assist the public.
 - PUCT Staff – Subject matter experts available to the public for technical support and advice regarding requirements and regulations imposed on utilities *associated with the CCN and rate making process, not on water quality.*
 - My personal staff of a Policy Advisor and an Attorney Advisor – available to provide support as long as there is no contested case before the commission specifically associated with the matter.

Additional Support Available For Financial, Management, Rates and CCN Matters

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- Ask PUCT for such assistance subject to available legislative appropriated funding.
- PUC contracts with TRWA to provide Financial and Managerial assistance to water or sewer utilities for:
 - Financial and other management issues.
 - Rate study and application issues.
 - CCN compliance issues.
- TCEQ provides assistance for technical issues associated with water quality regulations.

Issues Identified By The PUCT Affecting Water and Sewer Utilities

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- The cost of bringing a rate case before the commission because ultimately rate case expenses are paid by ratepayers.
- The expedited release process.

The Cost Of Bringing A Rate Case Before The Commission

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- The cost of the proceeding can be disproportionate to the change in rate requested by the utility.
- Some contemplated changes include:
 - Raise the cost of living increase for Class C utilities.
 - ✦ Currently a flat 1.57% annual increase.
 - ✦ Consider up to a 5% annual increase for two consecutive years.
 - ✦ Subsequent cost of living increases depending upon the utility meeting regulatory benchmarks showing improvement in managerial, financial and technical skills.
 - Shifting the tiers between rate classes or adding an additional tier.
 - ✦ Raise class C utilities from 500 up to 2,500 or less connections.
 - ✦ Incorporate a B Lite tier.
- Introduce better streamlining of rate making process for Class C and Class B utilities.

The Expedited Release Process

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- **TWC 13.254(a-5) – the expedited release process.**
- A portion of the tract of land being removed must be located within CCN sought to be certified.
- Must be 25 contiguous acres total, although not all needs to be in CCN.
- Each tract of land must be owned by the same property owner(s).
- Property must be located in a qualifying county.
- Property must not be receiving water or sewer services from the CCN holder.

Landowner Receiving Service Is Different Than Utility Providing Service

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- ***Texas General Land Office v. Crystal Water Supply Corp.***, 449 S.W.3d 130 (Tex. App, -- Austin 2014, pet. denied).
 - Question is not whether CCN Holder was ***providing*** service, but whether landowner was ***receiving*** service.
 - ✦ Must have actual service at the time of decertification or
 - ✦ Lines committed to the property
 - ✦ Acts taken in furtherance of serving the property

Landowner Receiving Service Is Different Than Utility Providing Service (cont'd)

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“The mere existence of water lines or facilities on or near a tract would not necessarily mean that tract was “receiving water service.”

...

“... Such a determination is essentially a fact-based inquiry requiring the Commission to consider whether the retail public utility has facilities or lines committed to providing water *to the particular tract* or has performed acts or supplied anything *to the particular tract* in furtherance of its obligation to provide water to that tract pursuant to its CCN.”

Unknowns

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- **UNANSWERED QUESTIONS**
- What facts are necessary to constitute as “receiving service.”
- How long must a landowner wait between disconnecting service and requesting an expedited release?
- What facts rise to the level of acts taken in furtherance of providing service?

Compensation For The Decertified CCN Holder

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- TWC 13.254(d)- new utility must provide “.... compensation for any property the utility commission determines is rendered useless or valueless to the decertified retail public utility....”
- Means Use-less or Value-less
 - Does not mean having less use or having less value.
- Staff's position
 - TWC 13.254(g) and TWC 13.255(g) (the statutes controlling the value of loss) do not apply until something is determined useless or valueless.

Contact Information

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